



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

DMJ:dmj  
F. #2013R00948

*610 Federal Plaza  
Central Islip, New York 11722*

November 14, 2013

**By Hand and ECF**

Honorable Joseph F. Bianco  
United States District Judge  
924 Federal Plaza  
Central Islip, New York 11722

Re: United States v. Tommy C. Constantine  
Criminal Docket No. 13 CR 607 (JFB)

Dear Judge Bianco:

This letter is respectfully submitted pursuant to 18 U.S.C. § 3145(a), to request that this Court stay, review and revoke the order of United States Magistrate Judge Bridget S. Bade in the District of Arizona that we anticipate will be issued in the late afternoon of November 15, 2013, and order the above-named defendant released on a bond. We also request that the Court conduct its own hearing and enter a permanent order of detention.

On November 13, 2013, federal agents arrested the defendant at his home in Scottsdale, Arizona on an arrest warrant that was issued in the Eastern District of New York based on an indictment returned in the case of United States v. Phillip A. Kenner and Tommy C. Constantine, also known as "Tommy C. Hormovitis, 13 CR 607 (JFB) (the "EDNY Indictment"). On November 14, 2013, the defendant was arraigned before United States Magistrate Judge Bridget S. Bade in the District of Arizona on the EDNY Indictment. A detention hearing is currently scheduled to take place on November 15, 2013, at 1:30 p.m. Central Standard Time which is 3:30 p.m. Eastern Daylight Savings Time. Although the

detention hearing has not yet occurred, the government has obtained a copy of the Pretrial Services Report that was prepared in the District of Arizona which sets forth its recommendation that the defendant be released on certain conditions.<sup>1</sup> Based on discussions with government authorities in the District of Arizona, including the United States Attorney's Office for the District of Arizona, regarding procedures and practices in that district, we anticipate that Magistrate Judge Bade will order the defendant released, in accordance with the recommendations contained in the Pretrial Services Report ("PTR"). Although the PTR sets forth risk of flight and danger to community findings, it nevertheless recommends the defendant's release on a personal recognizance bond with only standard release conditions and no suretor, monetary bond amount or financial security is recommended. The defendant is currently scheduled to appear before this Court on December 11, 2013, for a status conference. The government now seeks a stay, review and revocation of the anticipated Arizona release order and entry of an order of detention after a detention hearing is conducted before this Court.

18 U.S.C. § 3145(a) provides in pertinent part that -

If a person is ordered released by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court –

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release.

Pursuant to Section 3145(a)(1) this Court, as the court having original jurisdiction, has the authority to stay the order of the court in the District of Arizona pending

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<sup>1</sup> A copy of the defendant's PTR is provided herewith under seal in a separate submission for the Court's review.

this Court's review. 28 U.S.C. § 1651(a). The standard of review of the bail conditions set in the District of Arizona is de novo. United States v. Clark, 865 F.2d 1433 (4th Cir. 1989) (en banc). At the new hearing, this Court need not defer to the magistrate judge's findings or give specific reasons for rejecting them. United States v. Medina, 775 F.2d 1398, 1402 (11th Cir. 1985). At the hearing the Court may take additional evidence or conduct a new evidentiary hearing. United States v. Maull, 773 F.2d 1479, 1481-82 (8th Cir. 1985) (en banc).

The government previously submitted a detention letter dated November 13, 2013 to this Court, which we attach hereto and incorporate by reference as if fully set forth herein, that sets forth in detail the reasons why no condition or combination or conditions exist that can reasonably assure the defendant's appearance in this district and the safety of the community. We assert that nothing that the defendant submitted to the court in Arizona has ameliorated the risk of flight or assured the safety of the community in the case

Based on the above, we respectfully request that the Court order a stay of any District of Arizona order that releases the defendant on a bond, pending this Court's review of the government's motion. Such a stay will preserve this Court's jurisdiction and protect the integrity of its judicial process, in accordance with 28 U.S.C. § 1651(a) and any harm to the defendant will be minimized by a prompt determination of the government's motion for review under 18 U.S.C. § 3145(a). A proposed order is attached for the Court's review.

Finally, for the reasons set forth in our November 13, 2013 detention letter, we

also request that the Court revoke the bond set by the District of Arizona and order the defendant permanently detained.

Respectfully submitted,

LORETTA E. LYNCH  
United States Attorney

By:                     /s/                      
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enclosure

cc: Counsel for Defendant